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against creditors. We do not think any court would be inclined to make any distinction between the rights of judgment-creditors on the ground of the original cause of action. This rule of law, regarding the sale of personal property as incomplete until after a visible substantial transfer of possession to the vendee, is for the security of officers as well as creditors, that there may be some known evidence of title by which they may be able to determine the duty which the law imposes, as to levying on it.

Whether the same rule should be extended to officers making distress for taxes is perhaps not equally clear. The

English rule in regard to distress is far more sweeping than in regard to the levy of a *fiery facias*. A distress attaches to all property in the possession of the party in default. That is certainly so in regard to distress for rent in arrear, and there is no reason why the rule should not extend to distress for taxes. The distinction made in favor of creditors in the principal case may be founded upon valid considerations. But we generally feel averse to making distinctions in the law, unless upon grounds which commend themselves to the common mind. I. F. R.

Supreme Court of Alabama.

MOBILE AND OHIO RAILROAD CO. v. THOMAS.

It is not the absolute duty of a railroad company to furnish a safe engine. Its duty is to use care and diligence to furnish such an engine.

When an injury has occurred to a servant in consequence of a defect in an engine, the burden is on the servant to show negligence in the master, and it is not shifted by the fact that an injury has resulted from a defect.

Notice to the proper officers or servants of the company is notice to the company, and will render it liable unless it uses proper diligence in repairing the defect; but if it has made an effort by a competent servant to repair, it is not liable. Failure to remedy the defect does not conclusively prove negligence on the part of the workman, and if it did, he is a fellow-servant of the plaintiff, for whose negligence the company is not liable.

THE defendant in error, who was plaintiff below, was a fireman in the railroad company's employ. While on duty on a train, the engine broke down from some defect in itself, and the plaintiff was injured. Evidence was given at the trial tending to show that the engine, which was run on a "Mason side-bearing truck," was of a kind known to be unsafe; that this particular one had broken down several times before, and that the assistant-superintendent and master mechanic of the shop had been informed of this when it occurred.

The defendant offered evidence that the side-bearing truck was

safe, and that the foreman of the workshop, a competent mechanic, had repaired this engine, and pronounced it safe.

The jury rendered a verdict for the plaintiff under a charge which is sufficiently set out in the opinion of this court.

Geo. N. Stewart and *P. Hamilton*, for appellant.

Robert H. Smith, for appellee.

The opinion of the court was delivered by

A. J. WALKER, C. J.—The first charge given by the court below was as follows: “It was the duty of the defendant to have on the road suitable and proper engines, and to keep them in such condition that unusual risks would not attend those who were employed to perform service on them; and if they did not in this case have such an engine, and the plaintiff was ignorant of any defect in the engine, the burden is on the defendant to show that they used due caution and diligence in the matter.” The defendant was liable to its servants for injuries resulting from its negligence. When passengers on a railroad are injured in consequence of a defect in any instrument employed by it, it is a presumption—disputable, but not conclusive—that the injury resulted from negligence: 2 Redfield on Railways 190, § 11; *H. & S. Railroad Co. v. Higgins*, 5 Am. L. Reg. 715; s. c., 1 Redfield on Railways 533, § 131; *Edgerton v. N. Y. Railroad Co.*, 35 Barb. 193; *Curtis v. R. & S. Railroad Co.*, 18 N. Y. 534. But the same principle does not prevail in reference to servants of a railroad, as we shall see. The established doctrine of the law unquestionably is, that the onus of proving negligence is upon the servant: 2 Redfield on Railways 200, § 15; *Perkins v. E. Railroad Co.*, 29 Maine 307; s. c., 1 Am. Railway Cases 144. Our own decision in *M. & O. Railroad Co. v. Jarboe* (not yet reported), and *Steel & Burgess v. Townsend*, 37 Ala. 247, are not opposed to that proposition. In those cases, the question was, whether a loss of goods, or injury to them, was within an exception to a contract of affreightment; and it was held that the onus of proving that the loss or injury came within the exception, was upon the common carrier; that it did not fall within the exception, unless due care and diligence had been used, and that therefore the onus of proving such care and diligence was upon the carrier.

The charge here, however, was not that the onus of proof of

care and diligence was upon the defendant, but that it was *cast* upon it by a failure to have a suitable and proper engine. It bases the proposition that the onus of proof is shifted to the defendant, upon the assumption of its *absolute* duty to have a suitable and proper engine, as contradistinguished from its duty to use due and proper care and diligence to have such engine. Does the law impose upon a railroad corporation such absolute duty to its servants, or does it only impose the duty of using due diligence to have a suitable and proper engine? If the former question be answered in the affirmative, then the defendant guarantees absolutely to its servants the proper quality of all its engines, and it is liable notwithstanding the utmost care and diligence is used. We can perceive no reason to support the conclusion that the badness of the engine could create the presumption of negligence, and have the effect of shifting the onus of proof from the servant to the carrier. If the assumption that it was the absolute duty of the defendant to have a suitable and proper engine be correct, then the court has made an unmerited concession to the defendant, in only deducing the inference that the onus of proof was changed. Upon that assumption he should have drawn the inference of an unqualified liability—and in that view the charge would be too favorable to the defendant, and he could not object to it. Error, therefore, in the charge is shown, and shown only, by maintaining the proposition that the defendant's obligation or duty to its servant was discharged by the exercise of due and proper diligence to have and to keep suitable and proper engines. To impose upon the master a liability for injuries to the servant, resulting from causes against which due care and diligence fail to provide, absolves the servant from the risks necessarily incident to the business in which he is engaged. There are perils incident to the servant's employment against which caution and prudence cannot perfectly guard. Those perils and risks the servant must be presumed to know as well as the master, and when he contracts he must be understood to assume them, and stipulate for compensation proportioned thereto. It is in that the relation of a railroad corporation to passengers differs from its relation to servants. The principle has been so often declared both in England and in this country, that it has ceased to be disputable. *Priestly v. Fowler*, 3 M. & W. 1, the leading case upon the subject, is in reference to the liability of a master to a servant

for any injury received during his transportation upon the master's wagon. Lord ABINGER, in deciding the case, omitting a qualification which seems to have been since engrafted upon the rule, said: "No duty can be implied upon the part of the master, to cause the servant to be safely and securely carried, or to make the master liable for damage to the servant, arising from any vice or imperfection unknown to the master, in the carriage or in the mode of loading and conducting it." The later English cases of *Seymour v. Maddox*, 5 E. L. & E. 265, and *Cough v. Steel*, 24 Id., are to the same effect. In the latter of those cases, it was decided that the owner of a ship was under no obligation to a seaman serving on board, for the seaworthiness of the vessel, and was not liable to the seaman, in the absence of any knowledge of the defect, or personal blame of the master. *Marshall v. Stewart*, 33 E. L. & E., distinctly recognises neglect as the ground of the master's liability to his servant. In the recent case of *Wiggit v. Fox*, 36 E. L. & E. 486, we infer that the doctrine of *Priestly v. Fowler*, as above stated, was recognised. In America, the earliest case touching the subject is *Murray v. Railroad Co.*, 1 McMullen 386, where the liability of a railroad corporation to a servant for an injury received when on its cars was denied, unless there was fault in the master. In *Farwell v. B. W. R. C.*, 4 Metcalf 49, which is the leading American case in reference to the relation of railroads to their servants, the precise question of the liabilities of a railroad to its servants, for an injury arising from a defective locomotive did not arise, and Chief Justice SHAW, who delivered the opinion, withheld any expression upon the subject. In the later Massachusetts case of *Seaver v. B. & M. Railroad*, 14 Gray 466, the question arose and was decided in a *per curiam* by a court over which the same learned judge presided. The court below had ruled that a railroad was not responsible for an injury to a servant, resulting from a defect in a locomotive unless there was a want of due and reasonable care to provide a safe and suitable engine. The appellate court affirmed, remarking that the instructions to the jury were sufficiently favorable to the plaintiff: 1 Redfield on Railways 530, § 10. This case arrays the authority of the highest court of Massachusetts, including the great name of Chief Justice SHAW, in favor of the proposition that the railroad is not liable in such case, unless there was a want of reasonable care. In *Buzzell v. Laconia Manuf. Co.*, 48 Maine 113, it was ruled (a servant having been injured in conse-

quence of a defective bridge) that the master's liability depended upon the negligence and want of care, and the declaration was held defective for the lack of an averment that the insufficiency of the bridge was known to the defendant or would have been known but for the want of proper care and diligence. In *Noyes v. Smith*, 28 Vermont 59, there was an injury to an engineer resulting from a defect in an engine. It was decided that there does not arise from the relation of master and servant, the duty of furnishing an engine, well constructed and safe, to the engineer, and that where there is no actual notice of defects in an engine, and no personal blame exists on the part of the master, there is no implied obligation on his part that the engine is free from defect or that it can safely be used by the servant. See also to the same effect, *Hard v. V. & C. Railroad Co.*, 32 Vermont 473. In *Keegan v. W. R. Co.*, 4 Selden 175, the liability for injury to a servant, caused by a fault in an engine, was placed upon the established fact of negligence and misfeasance, and the distinction heretofore stated between passengers and servants is declared. There are a number of other decisions in New York to the same effect. *Wright v. N. Y. C. Railroad Co.*, 25 N. Y. 562, reviewing the decision of the Supreme Court, reported in 28 Barbour 80, refers the master's liability to his misconduct or negligence, and in relation to defects in machinery says, knowledge must be brought home to the master and proof given that he was ignorant of the same, through his own negligence and want of proper caution—in other words, it must be shown that he either knew, or ought to have known, the defect which caused the injury : see also *Byron v. N. Y. Tel. Co.*, 26 Barb. 39. In Ohio the rule is, that the master is liable on the ground of neglect, or want of care and diligence : *McGatrick v. Wason*, 4 Ohio St. 566, 575. In Pennsylvania, the proposition that there is a duty, or implied guaranty of the master to the servant, of the suitability and safety of the instruments furnished, is denied : *Ryon v. C. V. Railroad*, 23 Penn. 384. And lastly, this court itself has decided the question in hand. In *Perry v. Marsh*, 25 Ala. 659, it announced its opinion as follows : “In ordinary cases where a workman is employed to do a dangerous job or to work in a service of peril, if the danger belongs to the work he undertakes, or the service in which he engages, he will be held to all the risks which belong either to the one or the other ; but where there is no danger in the work or

service by itself, and the peril grows out of extrinsic causes or circumstances, which cannot be discovered by the use of ordinary precaution and prudence, the employer would be answerable precisely as a third person if the injury or loss was occasioned by his neglect or want of care." The perils of service are in this extract divided into two classes, for one of which the master is not responsible at all, while for the other class, in which the peril from a defective engine may be reckoned, he is responsible in the absence of ordinary precaution and prudence. This decision is also supported by the statement of the law in the older case of *Walker v. Bolling*, 22 Ala. 294.

We obtain the following conclusions from the foregoing collation of authorities: It is not an absolute duty of a railroad to furnish a suitable and safe engine. It is its duty to use due care and diligence to furnish such engine. When an injury has occurred to a servant, in consequence of a defect in an engine, the burden is upon the plaintiff to show negligence, or the want of care and diligence in the defendant corporation. The onus of proof is not shifted to the defendant by the fact that an injury has resulted from the defect. The first charge being inconsistent with these propositions is erroneous.

The proposition of the second charge is, that if the plaintiff's injury was caused by a defect in the engine, not known to him, of which defendant's servants, charged with the duty of receiving notice of such defects, and remedying the same, previously had notice, and if such servants being so notified had previously repaired the engine, but failed to remedy the particular defect, above stated, the defendant would be liable. This charge is obviously correct in assuming that notice to the servants, who were agents of the defendant to receive notice of defects in the engine, would affect the defendant with notice, if it designated one or more servants to receive such notice for itself, upon an established principle of law, notice within the scope of the agency, to the agent, would be equivalent to notice to the principal: *Smith v. Oliver*, 31 Ala. 39; *Wiley Banks & Co. v. Knight*, 27 Id. 336; *Mundine v. Pitts*, 14 Id. 84. The propriety of this portion of the charge, however, is also questioned in reference to the allegations of the complaint. It is contended that under the complaint, the defendant can only be charged on account of a neglect, which consisted of a failure to remedy a defect, *which it would have known but for*

the want of proper care and diligence, and not on account of negligence, consisting in a failure to remedy a defect *of which it was legally informed*. This question we leave undecided, because we doubt in reference to it, and on another trial it can be easily avoided by adding another count to the complaint.

Another objection made to this charge is, that it subjects the defendant to liability for a failure of its servants, who repaired the engine, to remedy the defect. The inference of the defendant's liability from such failure of its servant, can only be sustained by the maintenance of the two propositions, that negligence of the servant is a legal conclusion from such failure, and that the master is responsible for the negligence of the servant. If the failure to remedy the defect does not conclusively demonstrate negligence, the proposition of the charge is not correct. If it does demonstrate negligence, still the proposition of the charge is erroneous, unless the master is answerable for the servant's negligence, which has caused an injury to another servant. We consider the charge incorrect in both respects.

An artisan charged with a duty of repairing, within the scope of his handicraft, is not conclusively shown to have been negligent by a failure to remedy some defect, specifically pointed out to him. He may have attempted to remedy it, and exhausted the skill and care of his art, and yet from some defect in material, or some other cause beyond the detection of ordinary caution and care, may have failed to altogether cure the defect. The question of negligence in the mechanic was for the jury, upon the indeterminate fact presented by the hypothesis of the charge.

The question remains, whether, if the mechanic charged with repairing the engine, was negligent in failing to remedy the defect, the defendant is liable for the injury alleged to have resulted therefrom to the plaintiff. This question will arise upon another trial, and must be decided: Is a railroad responsible to one of its servants employed on a locomotive for an injury occasioned by the negligence of others employed in its machine-shop?

This court has twice decided that "when persons are employed by a common employer in the same general business, and one of them is injured by the negligence of the other, the employer is not responsible therefor:" *Cook & Scott v. Parham*, 24 Ala. 21; *Walker v. Bolling*, 25 Id. 294. Of this doctrine, it is said in the former case, that it is too well established both upon English and

American authority to be now controverted." The English authorities, without exception, support this ruling, and Judge REDFIELD, in whose mind some difficulty as to its justice and policy was produced by the reasoning of a Scotch judge, withdraws serious objection to it, if taken with the qualification prescribed in *Wiggett v. Fox*, 36 Eng. L. & Eq. 486; Redfield on Railways 525, § 5, n. 15. That qualification is, that the master is answerable that the servants shall be persons of ordinary skill and care. That qualification has been twice announced in this state. The precise shape of its statement is, that it is the master's duty to use due care in procuring competent servants or officers, and he is responsible for a failure to discharge that duty: *Cook v. Parham*, 24 Ala. 21; *Walker v. Bolling*, 22 Id. 294. With this qualification, the rule above stated, which prevails in England, must be regarded as established in this state. This rule is supported by all the English cases and all the American, with a few exceptions. Finding the question a *res adjudicata* in this court, and the rule thus supported by authority, we might here stop the discussion of the subject, but it will, perhaps, be more satisfactory to notice the meagre array of adverse authority. In Scotland the rule is opposite to that which prevails in England. That rule imposes on the master a duty to his servant not only of furnishing "good and sufficient machinery," but of having "all acts by others whom he employs, done properly and carefully." See *Dixon v. Rankin*, in the Court of Sessions, 1 Am. Railw. Cases 569. In point of authority we must prefer the adjudications of the English to the Scotch courts, if their reasons were in equilibrium; but on account of the reasoning and principle which underlie the English rule, we regard it as much more consonant with justice and public policy than the Scotch rule, which is built up upon the idea of a partial absolution of a servant from the risks, incident in the very nature of things, to his employment. In Ohio and Kentucky, the courts have engrafted upon the rule, prevalent in England, and in most of our states, an exception of the cases where the injured servant was subordinate in grade to, and subject to the authority of the servant from whose negligence the injury resulted: *L. M. R. Co. v. Stevens*, 20 Ohio 415; *L. & N. R. R. Co. v. Collins*, 5 Am. L. Reg. 265; s. c. 1 Redfield on R. 527, n. Judge REDFIELD, in a note to his work on Railways (1 vol. 532), remarks, in reference to that rule, that he

should regard it as more salutary than the present, but admits that the general current of authority is in the opposite direction. Yet, in a previous note, p. 525, the learned author had said that there seemed to be no serious objection to the English rule with the qualification stated in *Wiggitt v. Fox*, 36 E. L. & E. 486. In Indiana the rule has been adopted that the railroad is liable to a servant for an injury to his fellow-servant, when they are employed in different departments: *Gillinwater v. M. & I. R. Co.*, 5 Ind. 339; *Fitzpatrick v. N. A. & S. R. Co.*, 7 Id. 436. In Wisconsin the distinction made in Ohio, Kentucky, and Indiana is repudiated, and the court, boldly confiding in its own convictions, with the encouragement given by the Scotch authority, applies the doctrine of *respondeat superior* to the railroad company, where one of its servants has been injured by the negligence of another: *Chamberlain v. M. & M. R. R. Co.*, 11 Wis. 238. *Scudder v. Woodbridge*, Kelly's (Ga.) R. 195, is not authority against the English rule, which, as we have seen, is adopted in this state. On the contrary it recognises the rule, but establishes upon principles of humanity and of policy peculiar to the state of slavery, an exception of cases of injury to slaves.

The proposition which bases the liability on the inferiority of grade of the negligent servant, and the subordination to him of the injured servant, is, in our judgment, not founded in adequate reason. It can make no difference to the brakeman whether he is injured by the carelessness of another brakeman in some remote part of the train or of the engineer or conductor, nor can it make any difference whether a fireman is injured by the negligence of an engineer, who directs him, or the machinist who is charged with fitting the engine for the road. Protection is equally difficult to the injured party in all of the cases. There can be no reason for distinction in the nature of the employer's duty dependent upon the relation of the injured and negligent parties. The employer's obligation to his servant, in reference to fellow-servants, must be the same in all those cases. If the corporation is regarded by the law as present at what its servant does in one case it should be so regarded in every other, *qui facit per aliam, facit per se*, can be applied with no greater propriety in one case than another.

The maxim *respondeat superior* applied in favor of a servant injured by a fellow-servant, in *Priestly v. Fowler*, *supra*, is shown to be unreasonable by an indisputable array of its absurd conse-

quences. We need not reproduce them. The reasoning is conclusive, without the aid of the *reductio ad absurdum*. The servant pays nothing for his transportation. He is compensated for his service according to an agreed estimate of its value, in which the element of its peril is considered. The master can do nothing more for the safety of himself or his family and property than to be careful to select competent and fit servants. To inflict a penalty upon him for not doing more for his servant is unreasonable. As long as human agencies shall be imperfect, accidents must be incident to every business requiring caution and diligence. When the master has selected competent and fit agencies, those negligences are but risks of the business, which the servant himself must take, as the master is bound to do. After the employer has furnished competent and fit employees, the prevention of negligence on the part of any one of them is certainly as much within the power of the others as in that of the employer. Why then should the employer be responsible to one for the negligence of another? Besides, there is a principle of public policy which underlies the rule. The tendency of the rule is to quicken the zeal and vigilance of servants to prevent the negligence of their fellow-servants and avoid the consequences of it. The doctrine of *respondeat superior* rests upon principles of public policy which have no application here. Indeed, the rule of policy is reversed. The safety of the public, which must trust to the employees of railroads, is best consulted by impressing upon each that his own interest is inseparably blended with the safety of the passengers; and he is best stimulated to the utmost effort to prevent negligence in others, and obviate their destructive consequences by the knowledge that for injury sustained he has no redress save against the wrongdoer. He would be an unwise guardian of the public weal, who would relinquish any guaranty, however slight, of the fidelity and diligence of those agents who, beyond the sight of their employers, guide the perilous and powerful machinery of railroad transportation. It is impossible for those who represent the legal personality of a corporation to otherwise secure complete and safe repairs of defective engines than through the agency of competent and proper mechanics. If it has employed the agency of such mechanics in that duty, and no personal blame attached to it, it will not be responsible, if a defect not remedied in consequence of the negligence of such mechanic, shall have caused an injury

to another servant. Without commenting upon them, we refer to the authorities collated by Judge REDFIELD, in his work on Railways, vol. 1, § 8, pp. 520, 543. We conclude that the second charge was erroneous in deducing the liability of the defendant from the failure of its servants to effectually repair the engine and remedy a known defect, although there may have been no want of proper care and diligence on the part of the defendant.

The third charge lays down alternative hypotheses, upon each of which it asserts the defendant's liability. The charge upon the former hypothesis is, that if the plaintiff was, by reason of a defect in the engine, neither known to him, nor open to ordinary observation, exposed to unusual risks, and received the injuries complained of, and the defendant might have known of such defect, by ordinary care, then the defendant is liable. Whether this charge as an abstract proposition would be correct, if there were no other facts in the case than those which it brings to view, it is not necessary for us to decide. A charge in a suit on a promissory note, that the defendant is liable, if he executed the note, may be very correct if there is no other evidence, but it would be very incorrect if there were evidence conducing to show a payment. If the charge here were otherwise correct, it is fatally defective, because it excludes from the jury entirely the defensive matter in the case. If the engine was defective, and it was placed in the hands of competent and fit mechanics to repair, and the use of the engine without a cure of the defect, when the plaintiff was injured, was the result of the negligence of such mechanics, the defendant would not be liable. The court could not properly take from the jury the consideration of the defence set up, in reference to which there was evidence. For a like reason the latter proposition of the charge is erroneous.

Another charge given made notice of a defect in the engine to any agent of the defendant, no matter what might be the scope of his agency, notice to the defendant. This charge was obviously erroneous. The principle which should govern in reference to this subject is indicated in our remarks upon the first charge.

The court also charged, that if the engines of the kind used in this case were, owing to their make and construction, unsafe, and defendant had been running them for several years, it may be supposed to have known that they were unsafe, and if the jury believe such to be the facts, they must find for plaintiff. No steam-engine can

in strictness of language be absolutely safe, but the expression in the charge is to be considered in reference to the nature of the subject. If the defendant employed an engine from its make and construction unsafe in that sense, and knew thereof, or would have known thereof by the exercise of reasonable care and diligence, it would be responsible to one of its servants for injuries caused by such defect in make and construction, after it was known, or ought to have been known to the defendant, if the defect was not known to the plaintiff. But the charge infers a knowledge of the unsafeness growing out of the make and construction from the use of such engines for several years. Certainly such use would be a circumstance which might be argued to the jury on the question of notice, but the charge cannot be correct, unless notice is a legal presumption from such use. We do not think it is, and the charge is therefore erroneous. It might be, peradventure, that in the use of the engines the unsafeness had never been developed, and if so, the force of the fact would be lessened if not destroyed.

The charges hereinbefore noticed were given by the court upon the plaintiff's request. The court seems from the bill of exceptions to have given *mero motu* an additional charge, that if there was a defect in the engine causing it to be dangerous to use, and the company had notice thereof, it was the duty of the company to take steps to remedy such defect, and if such notice was communicated to proper agents, who were authorized to receive such notice, or whose duties were such that authority to receive such notice would be within the proper scope of their duties and agency, then such notice would be sufficient to charge the company with notice. A majority of the court deem this a fair and correct statement of the law, except in so far as it directs that notice to servants, whose duties were such that authority to receive such notice would be within the proper scope of their agency, is notice to the defendant. The question whether the authority to receive notice of a fact was within the scope of the duties of an agency is, upon ascertained facts, a question of law, and should not be referred to the jury. The principle which should govern this question is discussed in our remarks upon the second charge. See also Angell & Ames on Corporations, § 305; Story on Agency, § 140. JUDGE, J., thinks the entire charge

unobjectionable; the other judges regard it as objectionable, for the reason above stated.

Judgment reversed, and cause remanded.

Court of Appeals of New York.

WILLIAM D. ROBINSON, RESPONDENT, v. THE INTERNATIONAL LIFE ASSURANCE CO. OF LONDON, APPELLANT.

A local board of directors, established by a foreign corporation in New York, under regulations of the statute of that state, no matter how complete its organization or how full its authority to transact business without consultation with its principal, is still a mere agency, and not a distinct corporation.

Therefore a contract, as of insurance, made by this New York board with the plaintiff, a citizen of Virginia, was the contract of the foreign corporation with plaintiff, and the government of the foreign corporation being a neutral and having recognised the government of the plaintiff as a belligerent, the contract was not suspended by the civil war in America and payment of premiums to a sub-agent of the corporation, at Richmond, was a valid payment to the corporation.

The sub-agent at Richmond was appointed by the board at New York, and before the war had no authority to collect premiums until he was furnished with "renewal receipts," issued by the New York board. After June 1861, commercial intercourse between New York and Richmond being interrupted by the war, it was claimed by plaintiff that the sub-agent at Richmond had a verbal authority to receive premiums without being furnished with renewal receipts. The jury having found for plaintiff, this court must assume that there was such authority.

Such authority to receive payment implies authority to receive it in whatever was regarded as money at the time and place of payment. Confederate notes being so regarded and being received in good faith by the agent were a valid medium of payment, as between the plaintiff and the corporation.

THIS action was brought upon a policy of life assurance issued by the defendant by its local board of directors in New York to C. W. Macmurdo, December 8th 1845. The policy was in the usual form of such instruments. The premium upon the insurance was regularly paid by the assured, who was a resident of Richmond, Virginia, to and including the month of June 1861. After that down to the time of the decease of the insured, which happened in October 1862, the amounts becoming due for premiums under the policy were paid by the assured in what is known as Confederate currency. All the payments were made after the spring of 1858 to W. S. Cowardin, who was the defendant's agent at Richmond. He was appointed as such agent by the defendant's general agents at the city of New York. And